

Business Incentive Accountability Law Frequently Asked Questions (FAQ)

N.D.C.C. Chapter 54-60.1

What is the Business Incentive Accountability Law?

- N.D.C.C. Chapter 54-60.1 was created by the passage of HB 1203 during the 2005 Legislative Session. This law was amended by HB 1095(2007) and by SB 2136(2015).
- The law requires that a business incentive must meet a public purpose and that a recipient business must enter into a business incentive agreement with a grantor that reflects goals for the business incentive including the number of jobs to be created and the average compensation of the new jobs created.
- A recipient business, having received an incentive from a state or political subdivision grantor, must report to a state or political subdivision grantor annually for a minimum of two years or until the business has achieved all its goals, whichever is later.
- The law is available at: <http://www.legis.nd.gov/cencode/t54c60-1.pdf>

What changes does SB 2136 implement and what is the effective date?

- During the 2015 legislative session, Senate Bill 2136 was approved which changes the timing of the recipient report process within the Business Incentive Accountability Law. Businesses that receive incentives must report annually on their job creation progress and currently these reports are based on information as of December 31 with reports submitted by March 1. The passing of Senate Bill 2136 changes the timing of this reporting process. Effective August 1, 2015, recipient businesses must report on their progress with information as of the anniversary of the date they received the incentives and must file their report within sixty days after the anniversary of the benefit date.

Who is subject to the law?

- State government agencies and political subdivisions with the authority to directly or indirectly grant business incentives with state or local government funds, and entities created or authorized by a local government with this authority, are subject to the law.

Who is a grantor?

- A grantor is a state or political subdivision that directly or indirectly grants a business incentive to a recipient business. This includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.

What qualifies as a public purpose?

- Assisting community development.
- Increasing the tax base.
- Directly creating employment opportunities or indirectly creating employment opportunities through increased economic development.
- Job retention is only a public purpose in cases in which job loss is specific and demonstrable.

Who is a recipient?

- Any individual or business entity that receives a business incentive.

What is a benefit date?

- The date on which the recipient receives the business incentive.

What is a business incentive?

- Business incentive includes a state or political subdivision:
 - Direct cash transfer, loan, or equity investment;
 - Contributions of property or infrastructure;
 - Reduction or deferral of any tax or any fee;
 - Guarantee of any payment under any loan, lease, or other obligation; and
 - Preferential use of government facilities given to a business.
- To be considered a business incentive the total assistance in all forms must be valued at \$25,000 or more committed within a year to a recipient.
- Some exemptions that do not qualify as a business incentive are listed N.D.C.C. section 54-60.1-01(2).

What is required in the Business Incentive Agreement?

- A description of the incentive, including the value of the business incentive, which may be the amount of the incentive, the fair market value of the property conveyed to the recipient, or the fair market value of other in-kind benefits provided to the recipient; the type of incentive; and the type of district if the incentive is Tax Increment Financing (TIF).
- A statement of the public purposes of the incentive.
- Goals for the business incentive. The goals must include the number of jobs to be created and the average compensation of the new jobs created. The goals can be zero if the public purpose of the incentive does not include job creation or retention.
- A description of the financial obligation of the recipient if goals are not met.
- A commitment by the recipient to continue operations in the jurisdiction in which the business incentive is used for five years or more after the benefit date.
- The name and address of the parent corporation of the recipient, if any.
- A list of all financial assistance by all grantors for the project.
- The recipient's obligation if the recipient does not fulfill the business incentive agreement.

What happens if a recipient does not meet business incentive goals?

- At a minimum, a recipient that fails to meet business incentive agreement goals must pay back to the grantor the assistance, prorated to reflect any partial fulfillment of goals.
 - A grantor may extend for up to one year the period for meeting the business incentive agreement goals if the grantor determines that circumstances have made it impossible for the recipient to achieve the required goals.
 - A grantor may extend the period for meeting business incentive agreement goals by another additional year by documenting in writing the reason for the extension and attaching a copy of the documentation to the grantor's next annual report.
 - If after extending the period for achieving the goals of the business incentive agreement for two years a grantor determines that a goal has changed and justifies a decrease, after a public hearing, the grantor may decrease the jobs goals in the agreement to a lesser number or to zero and may amend the average compensation goals to reflect changed circumstances.
- A grantor may authorize a recipient to move from the jurisdiction in which the business incentive is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move.
- A Recipient that fails to meet its business incentive agreement goals may not receive business incentives from any grantor for a period of five years after the date of failure or until they have satisfied their repayment obligation, whichever occurs first.

What is required to be included in the annual Recipient Report?

- Recipients, who have received an incentive from a grantor, must submit annual recipient report forms to grantors with information on their progress toward goals outlined in the agreement, and will be subject to a penalty as defined in N.D.C.C. 54-60.1-05(3) for failing to report.
- At a minimum, each recipient shall provide the grantor with annual report for two years following the benefit date or until the goals are met, whichever is later.
- The recipient report requires, at a minimum:
 - The type, public purpose, and value of the incentive.
 - The number of new jobs to be created or retained in association with the business incentive.
 - The average compensation of all jobs to be created or retained in association with the business incentive, including identification of the average benefits and the average earnings provided by the employer on all jobs created or retained in association with the business incentive.
 - The date the job and average compensation goals are expected to be reached.
 - The actual number of jobs created or retained.
 - The average compensation of all jobs created or retained, including identification of the average benefits and average earnings provided by the employer on all jobs created or retained.
 - A statement of goals identified in the agreement and an update on progress toward them.
 - The location of the recipient prior to receiving the business incentive.
 - The name and address of the parent corporation of the recipient, if any.
 - A list of all financial assistance by all grantors for the project.

What is required to be included in the annual State Grantor Report?

- By April 1 annually, each state grantor that has granted a business incentive within the last five calendar years shall file an annual state grantor report with the Department of Commerce.
- The state grantor report must include:
 - A list of all recipients.
 - Each recipient's business incentive agreement goals.
 - A report on each recipient's progress toward the goals.

What is required to be included in the annual Political Subdivision Grantor Report?

- Political subdivision grantors shall maintain records of business incentives provided to recipients. By April 1 annually each political subdivision that granted a business incentive during the previous calendar year shall prepare an annual political subdivision grantor report. This annual report must include:
 - The names of the businesses receiving business incentives during that year.
 - The number of jobs expected to be created or retained by each business as a result of the business incentives.
 - The average compensation expected to be provided by the employer for the jobs expected to be created or retained as a result of the business incentives, including identification of the average benefits and average earnings to be provided by the employer for these jobs.
 - The total dollar value of all business incentives provided by the political subdivision during that year.
- Political subdivisions are not required to submit their annual grantor report to the Department of Commerce.

What is required to be included in the annual Compilation and Summary Report to legislative council?

- The Department of Commerce is required to publish a report summarizing information reported through the State Grantor Reports each year. Copies of the report will be submitted to the Legislative Council and posted on Commerce's website. The compilation and summary report must include:
 - The number of jobs targeted to be created or retained by each recipient receiving a business incentive in that year.
 - The number of jobs achieved in comparison to the jobs targeted for each businesses year by year.
 - The average compensation of jobs targeted to be created or retained by each recipient that year, including identification of the average benefits and average earnings to be provided by the employer for these jobs.
 - The average compensation of jobs created or retained compared to the targeted average compensation for each business year by year.
 - A distribution of business incentives by type of business and by public purpose.
 - The percentage of business incentives that reached goals within two, three, four, and five years from the benefit date.
 - The percentage of business incentives that did not meet goals and that did not receive repayment.
- A copy of the latest Compilation and Summary Reports are available on the Department of Commerce's website at: www.NDCommerce.com/Accountability.